



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

October 18, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nicholas B. Taintor, M.D.



Paul Tsui, Esq.
Associate Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower, ESP
Albany, New York 12237

RE: In the Matter of Nicolas B. Taintor, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 18-228) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

| | | |
|---------------------------|---|---------------|
| IN THE MATTER | : | DETERMINATION |
| OF | : | AND |
| NICHOLAS B. TAINTOR, M.D. | : | ORDER |
| | : | 18-228 |

The Department appeared by Associate Attorney, **Paul Tsui, Esq.** A Notice of Referral Proceeding and Statement of Charges dated June 14, 2018, were duly served upon **Nicholas B. Taintor, M.D.** (Respondent), who did not appear at the hearing.

After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charges that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) § 6530(9)(b) and § 6530(9)(d), and that the penalty of a suspension, wholly, of his medical license for three years, followed by probation with conditions, is appropriate.

BACKGROUND

The Department brought this case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(b) for "having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state." The Respondent is also charged with professional misconduct pursuant to Educ. Law § 6530(9)(d) for "[h]aving his...license to practice medicine revoked, suspended or having other disciplinary action taken...where the conduct resulting in the revocation, suspension or other disciplinary action involving the license...would, if committed in New York state, constitute professional misconduct under the laws of New York state." Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a]."

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Nicholas B. Taintor, M.D., the Respondent, was licensed by the New York State Education Department to practice medicine on November 10, 2008, by the issuance of license number 251050. (Ex. 8).
2. The Respondent was also licensed to practice medicine in the State of Virginia. On or about July 31, 2017, the Respondent admitted to Findings of Fact and Conclusions of Law before the Virginia Board of Medicine (Virginia Board), pursuant to a Consent Order (Virginia Order) which

included violations of Virginia § 54.1-2915A(2), (4) and (14) in that the Respondent was deemed unsafe to practice medicine due to diagnoses of alcohol dependence; major depressive disorder, recurrent; dependent personality and insomnia; and dismissal from the Virginia Health Practitioners' Monitoring Program (Virginia HPMP). Respondent also violated Virginia Code §§ 54.1-2915A(1), (16), and (18) for having materially misrepresented facts and provided fraudulent, false and misleading information in his application for Licensure to Practice Medicine and Surgery, submitted on September 17, 2013. (Ex. 9).

3. The Virginia Board ordered that the Respondent's license to practice medicine and surgery be suspended and that the suspension be stayed upon proof of Respondent's entry into a contract with the Virginia HPMP, and upon stay of the suspension that Respondent fully complies with and successfully completes the program. (Ex. 9).

4. On or about February 7, 2018, the Virginia Board stayed the suspension of Respondent's license to practice medicine and surgery upon receiving verification that Respondent entered into the Virginia HPMP. (Ex. 9).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee decided, by a vote of 3-0, that the evidence supports sustaining the charge of the Respondent having committed professional misconduct as defined by New York Education Law §6530(9)(b).

SECOND SPECIFICATION

The Hearing Committee decided, by a vote of 3-0, that the evidence supports sustaining the charge of the Respondent having committed professional misconduct as defined by New York Education Law §6530(9)(d).

HEARING COMMITTEE DETERMINATIONS

Regarding the first specification, after reviewing the records obtained from the Virginia Board of Medicine, the Hearing Committee unanimously determined (3-0) that, as alleged in the Statement of Charges, the Respondent violated Educ. Law § 6530(9)(b), which defines professional misconduct, in pertinent part as:

9(b) Being found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York, would constitute professional misconduct under the laws of New York state.

The Respondent admitted to Findings of Fact and Conclusions of Law. Specifically, he admitted to violating Virginia Code § 54.12915.A (2), (4) and (14) in that he is unsafe to practice due to diagnoses of alcohol dependence; major depressive disorder, recurrent; dependent personality and insomnia. (Ex. 9). He also admitted to violating Virginia Code § 54.12915.A(1), (16) and (18) in that he materially misrepresented facts and provided fraudulent, false and misleading information in his Application for Licensure to Practice Medicine and Surgery.

Regarding the second specification, after listening to testimony and reviewing the records obtained from the Virginia Board of Medicine, the Hearing Committee unanimously determined (3-0) that, as alleged in the Statement of Charges, the Respondent violated Educ. Law § 6530(9)(d), which defines professional misconduct, in pertinent part as:

9(d) Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken...or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action...if committed in New York state, would constitute professional misconduct under the laws of New York state.

The Petitioner recommended revocation of the Respondent's license. While the Committee strongly considered this penalty, especially considering the Respondent's failure to appear, despite receiving service of the Notice of Referral Proceeding in conformity with PHL 230(10)(d), and his admissions to his wrongdoings in Virginia, it was persuaded to a different conclusion. The Committee noted the evidence did not establish patient harm or a history of misconduct, but rather, related to the Respondent's personal struggles with alcohol abuse. As such, the Committee determined to suspend, wholly, his medical license for a period of three years, followed by probation for five years with conditions to include a sobriety monitor. The Committee also strongly recommends that the respondent seek an evaluation voluntarily concerning alcohol impairment from an evaluator of the Respondent's choosing, subject to the approval of the OPMC Director. Should the Respondent fail to arrange for and complete the evaluation within the first 90 days of probation, the Committee recommends the OPMC Director convene a Board Committee pursuant to PHL 230(7)(a), to determine if cause exists to order the Respondent to submit to an examination concerning impairment due to alcohol.

ORDER

IT IS HEREBY ORDERED THAT:

1. All specifications of professional misconduct, as set forth in the Statement of Charges, are sustained.
2. The Respondent's license to practice medicine in the State of New York is wholly suspended under PHL § 230-a(2)(a), for a period of three years.
3. At the completion of the period of whole suspension, the Respondent is placed on probation for five years during which he will comply with the terms of probation annexed as Attachment A.
4. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL § 230(10)(h).

Dated: October 16th, New York
 , 2018

Lyon M. Greenberg, M.D.
Chairperson

Jose M. David, M.D.
Paul J. Lambiase

Paul Tsui
Associate Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower, ESP
Albany, New York 12237

Nicholas B. Taintor, M.D.

ATTACHMENT A

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent shall abstain from the use of alcohol during the probationary period and shall be monitored by a qualified health care professional proposed by Respondent and approved in writing by the Director of OPMC (sobriety monitor).
6. The sobriety monitor shall oversee Respondent's compliance with the terms and conditions imposed herein and shall cause to be performed forensically valid, random, supervised, unannounced blood, breathalyzer and/or urine tests for the presence of alcohol. The sobriety monitor shall notify the Director of OPMC immediately if Respondent refuses such a test or if a test reveals Respondent is not alcohol free.
7. Every three months, the sobriety monitor shall submit a report to OPMC certifying compliance with these terms or describing any failure to comply.
8. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30-day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements

as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.

9. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
10. Respondent shall comply with these probationary terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

APPENDIX B

IN THE MATTER
OF
NICHOLAS B. TAINTOR, M.D.

STATEMENT
OF
CHARGES

Nicholas B. Taintor, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 10, 2008, by the issuance of license number 251050 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 31, 2017, the Respondent admitted Findings of Fact and Conclusions of Law before the Virginia Board of Medicine (hereinafter, "Virginia Board"), pursuant to a Consent Order (hereinafter, "Virginia Order") which included violations of Virginia Code §54.1-2915.A(2), (4) and (14) in that Respondent was deemed unsafe to practice due to diagnoses of alcohol dependence; major depressive disorder, recurrent; dependent personality and insomnia; and dismissal from the Virginia Health Practitioners' Monitoring Program (hereinafter, "HPMP"). Respondent also violated Virginia Code §§54.1-2915.A(1), (16), and (18) for having materially misrepresented facts and provided fraudulent, false and misleading information in his Application for Licensure to Practice Medicine and Surgery, submitted on September 17, 2013.

B. The Virginia Board ordered that the Respondent's license to practice medicine and surgery be suspended and that the suspension be stayed upon proof of Respondent's

entry into a Contract with the Virginia HPMP, and upon stay of the suspension that Respondent fully complies with and successfully completes the program.

C. On or about February 7, 2018, the Virginia Board stayed the suspension of Respondent's license to practice medicine and surgery upon receiving verification that Respondent entered into the Virginia HPMP.

D. The conduct resulting in the Virginia Board's disciplinary action against the Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(1) (Obtaining the license fraudulently);
2. New York Education Law §6530(2) (Practicing the profession fraudulently);
3. New York Education Law §6530(7) (Practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability); and/or
4. New York Education Law §6530(8) (Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, except for a licensee who is maintained on an approved therapeutic regimen which does not impair the ability to practice, or having a psychiatric condition which impairs the licensee's ability to practice)

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530[1], [2], [7] and [8]) as alleged in the facts of the following:

1. Paragraphs A, B, C, and D and D1, D and D2, D and D3, and/or D and D4.

SECOND SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his

or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530[1], [2], [7] and [8]) as alleged in the facts of the following:

2. Paragraphs A, B, C, and D and D1, D and D2, D and D3, and/or D and D4.

DATE: June 15, 2018
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct